

THE HONORABLE ROBERT S. LASNIK

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

JAMES STEWART, SUE PEARCE, JOSEPH
VIZZARD, WILIE JONES, TOLAN
FURUSHO and KEITH ROBERTSON,
derivatively on behalf of Goldtech Mining
Corporation, a Nevada corporation,

Plaintiffs,

vs.

TRACY KROEKER, RALPH JORDAN, JACK
LASKIN, NANCY EGAN, RICHARD SMITH
and SERGE BOURGOIN,

Defendants.

Civil Action No. CV4-2130L

**MOTION FOR LEAVE TO AMEND
COMPLAINT**

**NOTE FOR MOTION CALENDAR:
JULY 15, 2005**

I. MOTION

COMES NOW the Plaintiffs, by and through their attorney of record, Thomas E. Puzzo,
and petitions the Court for leave to amend their complaint. Plaintiffs Stewart, Pearce, Vizzard,
Jones, Furusho and Robertson (referred to herein collectively as the "Plaintiffs") have become
aware of additional malfeasance and breaches of fiduciary duty on the part of Defendants
Kroeker, Jordan, Laskin and Egan (referred to herein collectively as the "Defendants" or

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CIVIL CASE NO. CV4-2130L

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1 “Defendant-Directors”) which occurred after the Verified Stockholders Derivative Complaint
 2 (the “Complaint”) was filed. Pursuant to Federal Rules 15 (d) and 16 (b), Plaintiffs do hereby
 3 petition the Court for leave to amend the complaint to bring additional claims against the
 4 Defendant-Directors, as these claims had not yet occurred at the time of filing.

5 II. FACTUAL BACKGROUND

6
 7 On May 3, 2005, Goldtech Mining Corporation, a Nevada corporation (“Goldtech”), filed
 8 with the Securities and Exchange Commission (the “SEC”) an annual report on Form 10-KSB
 9 (the “10-KSB”). See *Declaration of Thomas E. Puzzo in Support of Plaintiffs’ Motion for Leave*
 10 *to Amend Complaint* (“Puzzo Dec.”), Exhibit A, p. 6-50 In the 10-KSB, Goldtech disclosed that
 11 in October 15, 2004, Defendant Tracy Kroeker (“Kroeker”) was issued 2,200,000 shares of
 12 Goldtech common stock. *Puzzo Dec.*, Exhibit A, p.18. Further, on October 15, 2004, Goldtech
 13 disclosed that “a former subsidiary” of Goldtech, Envyr Corporation, a Delaware corporation
 14 (“Envyr”), was issued 1,000,000 shares of Goldtech common stock. *Id.* at 44. However, Tolan
 15 Furusho (“Furusho”), a duly elected and incumbent director of Goldtech never received notice of
 16 the meeting, never waived his right to notice nor did he ever attend a meeting where such
 17 issuances were voted on and approved See *Declaration of Tolan Furusho in Support of*
 18 *Plaintiffs’ Motion for Leave to Amend Complaint* (“Furusho Dec.”) ¶¶ 2 - 4.

19
 20 On May 3, 2005, Goldtech further disclosed in the 10-KSB that its subsidiary, Envyr, was
 21 sold to Daniel J. Prins (“Prins”), an affiliate of Ralph Jordan (“Jordan”). See *Puzzo Dec.* Exhibit
 22 A, p. 19. The Envyr Agreement, executed October 1, 2004, provides that the Goldtech shall sell,
 23 transfer and deliver all of the issued and outstanding capital stock of Envyr to the buyer, Daniel
 24 J. Prins, for the sum of “\$1 in hand.” See *Puzzo Dec.* Exhibit B, p. 52. In addition to the sale of
 25 Envyr for “\$1 in hand”, Goldtech purportedly issued Envyr, 1,000,000 shares of Goldtech
 26

1 common stock on October 15, 2004. Again, Furusho, a director of Goldtech, never received
2 notice of the meeting, never waived his right to notice nor did he ever attend a meeting where
3 such issuances or actions were voted on and approved. *See Furusho Dec.* at ¶5.

4 On or about May 6, 2004, pursuant to a subpoena for documents to OTC Stock Transfer
5 (“OTC”), Plaintiffs received Legal Ledger Detail Reports from OTC which documents an
6 issuance on January 24, 2005 of 2,000,000 shares of common stock to 1132284 Alberta Ltd., an
7 Alberta, corporation and an affiliate of Kroeker. *See Puzzo Dec.* Exhibit C, p. 68. Furusho, a
8 director of Goldtech, never received notice of the meeting, never waived his right to notice nor
9 did he ever attend a meeting where the issuance of 2,000,000 shares of Goldtech common stock
10 to 1132284 Alberta Corporation was voted on and approved. *See Furusho Dec.* at ¶6.

11 The Legal Ledger Detail Reports from OTC also documents the cancellation of 5,633,000
12 shares of Goldtech common stock. *See Puzzo Dec.*, Exhibit D, p. 70-71. The Legal Ledger
13 Detail Reports from OTC also show a contemporaneous issuance to Kroeker for 5,633,000
14 shares of Goldtech common stock. *See Puzzo Dec.*, Exhibit E, p. 73. Furusho, a director of
15 Goldtech, never received notice of any meeting, never waived his right to notice nor did he ever
16 attend a meeting where the cancellation of the 5,633,000 shares of common stock and the
17 concurrent issuance of the exact same number of shares to Kroeker were voted on and approved.
18 *Furusho Dec.*, at ¶7, 8.

19 On or about May 24, 2005, Plaintiffs became aware of a Schedule 13D (the “Envyr 13D”) and
20 Schedule 13D/A (the “Envyr 13D/A”) statement of beneficial ownership filed with the SEC
21 regarding shares issued by Goldtech to Envyr. In the Envyr 13D/A, Ralph Jordan (“Jordan”) was
22 listed as the recipient of notice and communication and further signed the Envyr 13D/A. *See*
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1 *Puzzo Dec.*, Exhibit F, p. 78. Further, Item 3 of both the Schedule 13D and Schedule 13D/A
2 denote that no consideration was paid for the 1,000,000 shares issued to Envyr. *Id.* at p. 76, 79.

3 On or about May 25, 2005, Plaintiffs received documents produced by Defendants pursuant
4 to discovery and received Board resolutions substantiating the malfeasance and breach of duty
5 by the Defendant-Directors. In accordance with, Rule 23.1 of the Federal Rules of Civil
6 Procedure, Plaintiffs, by and through their counsel of record, sent a letter dated June 6, 2005 to
7 Goldtech demanding that remedial action be taken on the following six things: 1) the issuance of
8 1,000,000 shares to Envyr Corporation; 2) the issuance of 2,200,000 shares to Tracy Kroeker; 3)
9 the issuance of 5,633,000 shares to Tracy Kroeker; 4) the issuance of 2,000,000 shares to
10 1132284 Alberta Corp.; 5) the sale of all shares of Envyr Corporation to Daniel Prins for \$1.00
11 in hand; and 6) an update as to the ownership of the mining properties in Canada referred to
12 collectively as "the B.C. properties." *See Puzzo Dec.*, Exhibit G, p. 82-83.
13

14 On June 22, 2005, Goldtech filed a Current Report on Form 8-K disclosing that Goldtech
15 cancelled 11,541,400 shares of the Goldtech's common stock without valid board approval. *See*
16 *Puzzo Dec.*, Exhibit H, p. 87. Furusho, a director of Goldtech, never received notice of the
17 meeting, never waived his right to notice nor did he ever attend a meeting where the cancellation
18 of the 11,541,400 shares of Goldtech common stock was voted on and approved. *See Furusho*
19 *Dec.*, at ¶9.
20

21 Plaintiffs have also discovered that Goldtech, under the direction of Kroeker, has been acting
22 as stock transfer agent to Goldtech. Plaintiffs believe that neither Goldtech nor Kroeker are
23 registered transfer agents as required by Section 17A(c) of the Securities Exchange Act of 1934,
24 as amended. Plaintiffs have not attempted to contact Goldtech regarding its cancellation of
25 11,541,400 or the appointment of Goldtech/Kroeker as stock transfer agent, however, in light of
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the fact that over three weeks have elapsed since Plaintiffs' letter demanding remedial action was sent to Goldtech and no response has been forthcoming, Plaintiffs feels that demanding reissuance of the 11,541,400 shares of Goldtech common stock or the appointment of a registered stock transfer agent would be futile.

III. POINTS AND AUTHORITY

Pursuant to the Pretrial Scheduling Order issued by the court (the "Scheduling Order"), the Deadline for amending pleadings expired on May 11, 2005. In deciding a motion for leave to amend a complaint pursuant to Federal Rules, the Court has broad discretion to manage the pretrial phase of litigation. "The District Court is given broad discretion in supervising the pretrial phase of litigation, and its order ... will not be disturbed unless there is evidence of a clear abuse of discretion." *Miller v. Safeco Title Ins. Co.*, 758 F.2d 364, 369 (9th Cir. 1985).

A. Standard Governing Modification Of Pretrial Scheduling Orders.

The Federal Rules allow for the amendment of a complaint after the deadline for amending such pleadings has passed, in certain situations. Rule 16(b) provides that the "scheduling order shall not be modified except by leave of the court and upon a showing of good cause." Fed. R. Civ. Pro. 16(b) (2005).

Good cause is a fact determined by the court and based on a showing of diligence by the moving party. "Rule 16(b)'s 'good cause' standard primarily considers the diligence of the party seeking the amendment." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). Due to the late filing of the Goldtech 10-KSB¹, review of the document and knowledge

¹ SEC Rule 15d-1, promulgated pursuant to the Securities Exchange Act of 1934, as amended, states in relevant part "Annual reports shall be filed within the period specified in the appropriate report form. General Instruction A to SEC Form 10-KSB, the report form which Goldtech uses to file its annual reports, states in relevant part, "Annual reports on this form shall be filed within 90 days after the end of the fiscal year covered by the report."

of the actions in dispute was not discoverable until after the complaint had already been filed with the Court. *See Puzzo Dec.* Exhibit A, p. 50. Further, additional malfeasance and discovery documents evidencing additional breaches of duty and bad faith were received subsequent to the cutoff date for amending the complaint, justifying Plaintiff's supplemental pleading.

B. Plaintiffs Have Good Cause To Modify The Scheduling Order.

A party can demonstrate good cause for the modification of a scheduling order by showing that, even with the exercise of due diligence, the party was unable to meet the timetable set forth in the scheduling order. *See Zikovic v. Southern California Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002); *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608 (9th Cir. 1992). Plaintiffs have become aware of additional malfeasance and breaches of fiduciary duty on the part of defendants which occurred after the complaint was filed. However, the additional actions in dispute did not come to Plaintiffs' attention until after the complaint had been filed and only several days prior to the deadline for amending pleadings. As such, even though plaintiffs were diligent, plaintiff's ability to conduct the necessary investigation and prepare the appropriate documents for filing with the Court was barred by the expiration of the deadline.

"Unlike Rule 15(a)'s liberal amendment policy which focuses on the bad faith of the party seeking to interpose an amendment and the prejudice to the opposing party, Rule 16(b)'s 'good cause' standard primarily considers the diligence of the party seeking the amendment." *Johnson v. inquiry* is upon the moving party's reasons for seeking *Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). Plaintiffs have been steady, earnest, and put forth an energetic effort in investigating defendants and their actions. Had Goldtech's 10-KSB filing been filed in

with the SEC on May 3, 2005), Goldtech's 10-KSB for the fiscal year ended December 31, 2005 would have been required to be filed no later than March 31, 2005 (which is 90 days after December 31, 2004).

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1 a timely manner Plaintiffs would have added the causes of action prior to the expiration of the
 2 deadline for amending pleadings, but defendants prevented this by filing of the Goldtech 10-KSB
 3 on May 3, 2005. Although the existence or degree of prejudice to the party opposing the
 4 modification might supply additional reasons to deny a motion, the focus of the inquiry is upon
 5 the moving party's reasons for seeking modification. *Gestner Corp. v. Case Equip. Co.*, 108
 6 F.R.D. 138, 141 (D. Me. 1985). Defendant's actions, as described in Goldtech's most recent 10-
 7 KSB, identify continued egregious activity by Defendants and should be adjudicated along with
 8 all their previously identified unauthorized activities as a pattern of illegal activity. *See Puzzo*
 9 *Dec.*, Exhibit A, p. 6-50

11 Plaintiffs were further required under Federal Rule 23.1 to make a demand of Goldtech to
 12 take remedial action before adding new claims to its existing complaint. Fed. R. Civ. P. 23.1
 13 states that "the complaint in a shareholder derivative action shall allege with particularity the
 14 efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the directors or
 15 comparable authority and, if necessary, from the shareholders or members, and the reasons for
 16 the plaintiff's failure to obtain the action or for not making the effort." Fed. R. Civ P. 23.1
 17 (2005). Plaintiffs, on June 6, 2005, made a demand on Goldtech for remedial action with regard
 18 to the newly discovered malfeasance and additional breaches of fiduciary duty. Goldtech as of
 19 the date of this motion has yet to respond, deny or take remedial action on any of the allegations
 20 raised by the Plaintiffs. *See Puzzo Dec.*, Exhibit G, p.82-83. As a result, Plaintiff seeks leave of
 21 the court to amend the complaint to include the additional breaches of duty and malfeasance of
 22 the Defendant-Directors listed below despite the passing of the May 11, 2005 deadline denoted
 23 in the pre-trial order.

24 1. Sale of Envyr to Daniel Prins

1 On May 3, 2005, Goldtech disclosed for the first time in its 10-KSB, that pursuant to a
2 Sales Agreement dated October 1, 2004, Goldtech sold "all of the issued and outstanding shares
3 of capital stock" of Envyr, the only revenue generating asset of Goldtech, to Daniel Prins, an
4 affiliate of Jordan, *for consideration of One Dollar (\$1.00)* (the "Envyr Sale"). *See* Puzzo Dec.
5 Exhibit B, p. 52, §1.2. Under Nevada Law, "[e]very corporation may, by action taken at any
6 meeting of its board of directors, sell, lease or exchange all of its property and assets, including
7 its good will and its corporate franchises, upon such terms and conditions as its board of
8 directors may deem expedient and for *the best interests of the corporation*, when and as
9 authorized by the affirmative vote of stockholders holding stock in the corporation entitling them
10 to exercise at least a majority of the voting power given at a stockholders' meeting called for that
11 purpose..." Nev. Rev. Stat. 78.565 (2005) (emphasis added). Under the Bylaws of Goldtech,
12 Article 5, section 5.5, "[t]he person calling a special meeting of the Board shall give written
13 notice to each director of the time, place, date and purpose of the meeting not less than three
14 business days if by mail and not less than 24 hours if by telegraph or in person before the date of
15 the meeting." *See* Puzzo Dec, Exhibit I, p. 96. Additionally, under the Bylaws of Goldtech, the
16 Board shall "give notice of each meeting of [s]tockholders, whether annual, or special, not less
17 than 10 nor more than 50 days before the date of the meeting." *See* Puzzo Dec, Exhibit I, p. 91.

18 The sale of Envyr is an invalid transfer of assets because Tolan Furusho ("Furusho"), a
19 duly appointed and incumbent director of Goldtech, never (i) received any notice of a special or
20 annual meeting of the Board of Directors of Goldtech to vote upon or otherwise approve the
21 Envyr Sale, or (ii) provided any written (or other) consent in lieu of any meeting of the Board of
22 Directors of Goldtech approving the Envyr Sale as required by NRS 78.565. *See* Furusho Dec.,
23 ¶5. Further, Goldtech never called a stockholders' meeting, received the approval of the
24 shareholders or sought unanimous consent from the stockholders of Goldtech to approve the
25 Envyr Sale as required by Nevada State Law. Additionally, the transaction was not in the best
26 interests of the corporation as evidenced in the invalid board resolution, passed by the Defendant

1 Directors, but rather in the interests of “the customers of Envyr.” See *Puzzo Dec.*, Exhibit K, p.
2 108.

3 SEC Form 8-K, Item 2.01, (entitled “Completion of Acquisition or Disposition of
4 Assets”) requires the disclosure of, among other things, the amount or consideration given or
5 received for the assets, and the identity of the person(s) to whom such assets were sold and the
6 nature of any material relationship, between such persons and the registrant or any of its affiliates
7 within four (4) days of the event.² Contrary to disclosure requirements required by Form 8-K,
8 Goldtech never disclosed the Envyr Sale until 7 months later when it filed the May 3, 2005 10-
9 KSB. Had Goldtech timely disclosed the Envyr sale, as required by Form 8-K, Plaintiffs would
10 have been aware of the unauthorized sale as early as October 5, 2004

11 **2. The issuance of 1,000,000 shares of common stock to Envyr**

12 On September 21, 2004, only nine days prior to the Envyr Sale, Goldtech issued
13 1,000,000 shares of common stock to Envyr, and Envyr paid no consideration for such 1,000,000
14 shares as evidenced in Item 3 of the Schedule 13D/A filed by Envyr on May 24, 2005. See
15 *Puzzo Dec.*, Exhibit F, p. 79. The issuance of the 1,000,000 shares to Envyr is in violation of the
16 Nev. Rev. Stat., 78.211 (1), which requires that “[t]he board of directors may authorize shares to
17 be issued *for consideration* consisting of any tangible or intangible property or benefit to the
18 corporation, including, but not limited to, cash, promissory notes, services performed, contracts
19 for services to be performed or other securities of the corporation.” Nev. Rev. Stat. 78.211 (1)
20 (2005).

21 The 1,000,000 shares were never duly authorized nor validly issued because Furusho, a
22 duly appointed and incumbent director of Goldtech, never (i) received any notice of a special or
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24 ² SEC Rule 15d-11(a), promulgated pursuant to the Securities Exchange Act of 1934, as amended, states in relevant
25 part “every registrant . . . shall file a current report on Form 8-K within the period in that form General
26 Instruction B.1 to SEC Form 8-K states in relevant part, “Unless otherwise specified, a report is to be filed or
provided otherwise, Goldtech would have to have disclose any sale of assets, any sales of unregistered securities and
any changes in control of Goldtech within four days of the occurrence.

1 annual meeting of the Board of Directors of Goldtech to vote upon or otherwise approve of the
 2 issuance of 1,000,000 shares of common stock to Envyr, or (ii) provided any written (or other)
 3 consent in lieu of any meeting of the Board of Directors of Goldtech approving of the issuance of
 4 1,000,000 shares of common stock of Goldtech to Envyr. *See Furusho Dec.*, p. 4; *Puzzo Dec.*
 5 Exhibit I, p. 96. No valid Board of Directors meeting was held where the issuance of 1,000,000
 6 shares of common stock of Goldtech to Envyr was approved. Plaintiff did not receive notice that
 7 Envyr was issued 1,000,000 shares of Goldtech common stock until the action was disclosed in
 8 May 3, 2005 10-KSB.

9 **3. The issuance of 2,200,000 shares of common stock to Tracy Kroeker**

10 On October 15, 2004, Goldtech issued 2,200,000 shares of common stock to Kroeker for
 11 no consideration in violation of Nev. Rev. Stat. 78.211(1) (2005). The shares issued to Kroeker
 12 were never duly authorized nor validly issued because Furusho, a duly appointed and incumbent
 13 director of Goldtech, never (i) received any notice of a special or annual meeting of the Board of
 14 Directors of Goldtech to vote upon or otherwise approve of the issuance of 2,200,000 shares of
 15 common stock of Goldtech to Kroeker, or (ii) provided any written (or other) consent in lieu of
 16 any meeting of the Board of Directors of Goldtech approving of the issuance of 2,200,000 shares
 17 of common stock of Goldtech to Kroeker. *See Furusho Dec.*, ¶3; *Puzzo Dec.* Exhibit I, p. 96.
 18 No valid Board of Directors meeting was held where the issuance of 2,200,000 shares of
 19 common stock of Goldtech to Kroeker was approved. Plaintiff did not receive notice that
 20 Kroeker was issued 2,200,000 shares of Goldtech common stock until the action was disclosed in
 21 May 3, 2005 10-KSB.

22 **4. The issuance of 5,633,000 shares of common stock to Tracy Kroeker**

23 On November 22, 2004, Goldtech issued 5,633,000 shares of common stock to Kroeker
 24 for no consideration in violation of Nev. Rev. Stat. 78.211(1) (2005) as evidenced in Item 3 of
 25 Schedule 13D filed by Kroeker on May 5, 2005. *See Puzzo Dec.*, Exhibit K, p. 112. Further, the
 26 shares issued to Kroeker were never duly authorized nor validly issued because Furusho, a duly

1 appointed and incumbent director of Goldtech, never (i) received any notice of a special or
2 annual meeting of the Board of Directors of Goldtech to vote upon or otherwise approve of the
3 issuance of 5,633,000 shares of common stock of Goldtech to Kroeker, or (ii) provided any
4 written (or other) consent in lieu of any meeting of the Board of Directors of Goldtech approving
5 of the issuance of 5,633,000 shares of common stock of Goldtech to Kroeker. *See Furusho Dec.*,
6 ¶7; *Puzzo Dec.* Exhibit I, p. 96. No valid Board of Directors meeting was held where the
7 issuance of 5,633,000 shares of common stock of Goldtech to Kroeker was approved. Plaintiff
8 did not receive notice that Kroeker was issued 5,633,000 shares of Goldtech common stock until
9 the action was discovered in the stock transfer records provided by OTC Stock Transfer, Inc. to
10 Plaintiffs on or about May 6, 2005.

11 **5. The issuance of 2,000,000 shares to 1132284 Alberta Ltd.**

12 On January 24, 2005, Goldtech issued 2,000,000 shares of common stock to 1132284
13 Alberta Ltd. for no consideration as evidenced in Item 3 of the Schedule 13D filed by 1132284
14 Alberta Ltd. on May 5, 2005. *See Puzzo Dec.*, Exhibit L, p. 116. Further, the 13D establishes
15 that Kroeker is the beneficial owner of the shares issued to 1132284 Alberta Ltd. *See Puzzo Dec.*
16 Exhibit L at p. 115. The shares issued to 1132284 Alberta Ltd. were never duly authorized nor
17 validly issued because Furusho, a duly appointed and incumbent director of Goldtech, never (i)
18 received any notice of a special or annual meeting of the Board of Directors of Goldtech to vote
19 upon or otherwise approve of the issuance of 2,000,000 shares of common stock of Goldtech to
20 1132284 Alberta Ltd., or (ii) provided any written (or other) consent in lieu of any meeting of the
21 Board of Directors of Goldtech approving of the issuance of 2,000,000 shares of common stock
22 of Goldtech to 1132284 Alberta Ltd. *See Furusho Dec.*, ¶6; *Puzzo Dec.* Exhibit I, p. 96. No
23 valid Board of Directors meeting was held where the issuance of 2,000,000 shares of common
24 stock of Goldtech to Kroeker was approved. Plaintiff did not receive notice that 1132284
25 Alberta Ltd. was issued 2,000,000 shares of Goldtech common stock until the action was
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1 discovered in the stock transfer records provided by OTC Stock Transfer, Inc. to Plaintiffs on or
2 about May 6, 2005.

3 **6. The cancellation of 11,541,400 shares of common stock**

4 On June 22, 2005, Goldtech filed a Form 8-K with the SEC stating that "it has completed
5 the cancellation of 11,541,400 shares. This action effectively reduces the company's outstanding
6 shares from more than 19 million to 7,628,841. Goldtech had previously cancelled 11.11 million
7 shares that were issued in 2003 to be exchanged in consideration for three mining properties in
8 British Columbia." *See Puzzo Dec.*, Exhibit H at p. 87. On June 23, 2005 Goldtech issued a
9 press release stating, in principal part: "Goldtech Mining Corporation (OTCBB:GMNC - News)
10 announced today that it has completed the cancellation of 11,541,400 shares of the company's
11 common stock (or approximately 83% of the 13,895,991 validly issued and duly authorized
12 shares of common stock of Goldltech on such date), reducing its outstanding shares from more
13 than 19 million to 7,628,841. Goldtech had previously cancelled 11.11 million shares issued in
14 2003 to be exchanged in consideration for three mining properties in British Columbia." *See*
15 *Puzzo Dec.*, Exhibit M, p. 119-125. The cancellation of shares is invalid because Furusho, a duly
16 appointed and incumbent director of Goldtech, never (i) received any notice of a special or
17 annual meeting of the Board of Directors of Goldtech to vote upon or otherwise approve of the
18 cancellation of the 11,541,400 shares, or (ii) provided any written (or other) consent in lieu of
19 any meeting of the Board of Directors of Goldtech approving of cancellation of the 11,541,400
20 shares. *See Furusho Dec.*, ¶9; *Puzzo Dec.* Exhibit I, p. 96. As such, the Board of Directors of
21 Goldtech never approved of the cancellation of the validly issued and duly authorized
22 11,541,400 shares of common stock of Goldtech and further has never disclosed such
23 cancellations in any filing with the Commission. Further, the cancellation of the 11,541,400
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1 shares by Defendant-Directors are a clearly an attempt to obtain control of the Goldtech and
 2 clearly constitutes a breach of duty of loyalty. Plaintiffs did not become aware of the
 3 unauthorized cancellation of the validly issued and duly authorized 11,541,400 shares until June
 4 23, 2005.

5
 6 **7. Goldtech does not have a stock transfer agent registered with the SEC**
 7 **pursuant to Section 17A(c) of the Securities Exchange Act of 1934, as**
 8 **amended.**

9 On or about September 13, 2005, OTC Stock Transfer, Inc. ("OTC Stock Transfer") of
 10 Salt Lake City, Utah began acting as transfer agent for Goldtech. On or about April 22, 2005,
 11 OTC Stock Transfer resigned as transfer agent for Goldtech, and after such resignation
 12 transferred all stock transfer records and documents to Kroeker. See Puzzo Dec., Exhibit N,
 13 p.127-128. Goldtech is believed to be acting as its own transfer agent under the direction of
 14 Kroeker in violation of Section 17A(c) Securities Exchange Act of 1934, as amended (the
 15 "Exchange Act"). Section 17A(c) of the Exchange Act states requires that,

16 [e]xcept as otherwise provided in this section, it shall be unlawful for any
 17 transfer agent, unless registered in accordance with this section, directly or
 18 indirectly, to make use of the mails or any means or instrumentality of interstate
 19 commerce to perform the function of a transfer agent with respect to any security
 20 registered under Section 12 of this title or which would be required to be registered
 21 except for the exemption from registration provided by subsection (g)(2)(B) or
 22 (g)(2)(G) of that section...

23 Securities Exchange Act of 1934, as amended, 15 U.S.C. §78q-1(c) (2005). Upon information
 24 and belief, neither Goldtech nor Kroeker is a registered transfer agent under the Section 17A(c)
 25 Exchange Act. Moreover, the appointment of Goldtech as its own transfer agent is invalid
 26 because Furusho, a duly appointed and incumbent director of Goldtech, never (i) received any
 notice of a special or annual meeting of the Board of Directors of Goldtech to vote upon or
 otherwise approve the appointment of Kroeker or Goldltech as transfer agent for Goldtech, or (ii)

provided any written (or other) consent in lieu of any meeting of the Board of Directors of Goldtech approving approve the appointment of Kroeker or Goldtech as transfer agent for Goldtech. *See Furusho Dec.*, ¶10; *Puzzo Dec.* Exhibit I, p. 96. Therefore, the Board of Directors of Goldtech never approved the appointment of Kroeker or Goldtech as transfer agent for Goldtech and the directors of Goldtech did not unanimously consent in lieu of any meeting of the Board of Directors to approve the appointment of Kroeker or Goldtech as transfer agent for Goldtech.

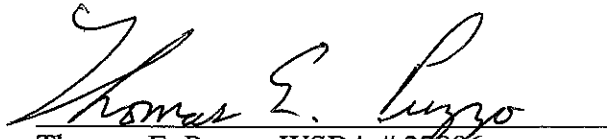
C. The interests of fairness and judicial efficiency and economy favor granting leave to amend the complaint

Defendant-Directors failed to disclose the unauthorized sale of Envyr until May 3, 2005, approximately 7 months after the transaction, in direct violation of the four (4) day reporting requirements of Form 8-K. Defendant-Directors further violate Federal securities laws by filing the Annual Report on Form 10-KSB, over a month late under the rules governing Form 10-KSB, If the Court denied Plaintiffs motion, the Defendant-Directors would benefit from their violation of Federal securities laws. Further, it would be manifestly unjust to force Plaintiffs to file a new complaint and re-litigate issues which have already been decided by this court. Finally, judicial efficiency weighs heavily in favor of the granting of this motion because the parties to the cause of action are the same, the Court is already familiar with the factual background underlying this case and has already dispensed with procedural issues which a new trial court would have to review and consider de novo. Plaintiff has attached for the Courts review as Exhibit O, p. 130-184, to the Declaration of Thomas E. Puzzo in Support of the Motion for Leave to Amend the Complaint, a copy of the proposed amended complaint.

IV. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests leave to file an amended supplemental complaint in this proceeding that would set forth the new causes of action, based on the most recent illicit actions taken by defendants.

DATED: June 30, 2005



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